

## REMARKS

Claims 20-39 and 41-45 are pending. The *Advisory Action* mailed on April 1, 2008 noted that the Applicant's Response filed on February 19, 2008 failed to place the application in condition for allowance.

At issue is the rejection of claims 20, 21, 26, 27, 35-37, 39, 42, 43, and 45 under 35 U.S.C. § 112, ¶ 1, and the rejection of claims 20, 22-39, and 41-45 under 35 U.S.C. § 103(a) over U.S. patent number 6,202,060 (Tran) and U.S. patent number 5,835,861 (Whiteside). Claim 21 is rejected under 35 U.S.C. § 103(a) over Tran in view of Whiteside and U.S. patent number 6,021,432 (Sizer).

### *Amendments to the Specification*

The specification has been amended to explicitly incorporate portions of U.S. provisional patent application number 60/259,503, filed January 2, 2001, entitled "Dynamically Load Balanced and Pulsed Media Distribution Network Architecture," and U.S. provisional patent application number 60/174,309, filed January 3, 2000, entitled "Personal Media Access and Storage Device." Each of these provisional patent applications was previously incorporated by reference in the instant application. As such, the explicit recitation of subject matter from these incorporated references does not constitute the addition of new matter.

The specific subject matter and location within each referenced document includes:

"The device of the present invention connects to the Internet by using both wireless phone technology and riding on top of existing radio and TV broadcast frequencies...." *Provisional Specification*, p. 1, l. 9-10;

"The device can use standard and/or proprietary data transmission technology to send and receive full screen video content over a wireless Internet connection." *Provisional Specification*, p. 1, l. 18-20.

"By segmenting the content over many servers located throughout the global Internet, a high degree of network load balancing and delivery efficiency can be achieved." 60/259,503, page 7, first paragraph;

"...assembles these movie segments, regardless of the order they arrive or from which server they arrive, it prepares the movie for playback..." 60/259,503, page 8, second paragraph;

"...a built in camera for capturing still and full motion digital video images." *Provisional Specification*, page 1, l. 17.

"User[']s can capture a video of a product...and then send it via the Internet back to the home office." *Provisional Specification*, page 2, l. 9-11.

### ***Amendments to the Claims***

Claims 20, 21, 27, 35, 37, 42, and 43 are presently amended. No new matter is added via these amendments. All of these claims find proper support in the specification as filed and/or through the applications incorporated by reference.

### ***Rejections Under 35 U.S.C. § 112, ¶ 1***

The Examiner contends that "[c]laims 20, 21, 26, 27, 35-37, 40, 42, 43, and 45" "fail[] to comply with the written description requirement." *Final Office Action*, 2. Claim 40 was subsequently cancelled.

**§ 112, ¶ 1 Rejection of claim 20:**

Claim 20 as presently amended reads as follows:

20. (currently amended) A portable wireless media access device comprising:
- a wireless interface configured to provide session-based communication connectivity over a wireless network;
  - a proximity sensor configured to scan for and detect a remote wireless device capable of wireless communication with the portable wireless media access device, ~~the wireless communication occurring over the wireless network;~~
  - memory configured to store audio/video content; and
  - a user interface configured to receive instructions related to access and playback of audio/video content stored in the memory, wherein at least one audio/video content selection stored in the memory is received over the wireless network from a detected remote wireless device.

In the *Final Office Action*, the Examiner admits that “the device may receive audio/video through a subscribed wireless information service... and may form a local area network with compatible devices within range,” then contends that “there is no support for the wireless communications with portable devices [to] occur[] over the same network as the communication to receive audio/video.” *Final Office Action*, page 3.

**Support for the transmission/receipt of audio/video over wireless networks**

The Applicant notes that the capability to wirelessly send and receive video content is described in the *Specification*, for example (referring to FIG. 7):

“If the request is a video request, (block 143), the apparatus 11 initiates a wireless communication session with a video server (block 144) and requests the video. The requested video is received (block 145) by a data stream or similar downloading process” *Specification*, p.9, l. 18-21.

Further, the capability to wirelessly send and receive video content is also described in the provisional specification (which was incorporated by reference in the instant application), for example:

“The device can use standard and/or proprietary data transmission technology to **send and receive full screen video content over a wireless Internet connection.**” *Provisional Specification*, p. 1, l. 18-20, (emphasis added)

The Applicant has shown written support for sending and receiving audio/video content over a wireless internet connection. As such, the Applicant asserts that written support exists for claim 20, and respectfully submits that the Examiner’s rejection of claim 20 under 35 U.S.C. § 112, ¶ 1, has been overcome.

**§ 112, ¶ 1 Rejection of claim 21:**

Claim 21 was rejected under 35 U.S.C. § 112, ¶ 1, substantially for alleged lack of support for “accompanied by.” Claim 21 is amended herein to read as follows:

21. (currently amended) The portable wireless media access device of claim 20, wherein the receipt of the at least one audio/video content selection received over the wireless network ~~is accompanied by data transmitted over~~ includes the receipt of data transmitted over a radio sideband carrier frequency.

This amendment is supported in the *Specification*, for example, by: “Alternatively, the wireless session 13 could be provided via a frequency modulation (FM) radio sideband carrier frequency.” *Specification* on p. 5, l. 4-7. As such, the Applicant submits that the 35 U.S.C. § 112, ¶ 1 rejection of claim 21 has been overcome.

**§ 112, ¶ 1 Rejection of claim 27:**

Claim 27 was rejected for the same lack of support as claim 20. Claim 27 is amended herein to better comport with amended claim 20. Inasmuch the 35 U.S.C. § 112, ¶ 1 rejection of claim 20 has been overcome, the 35 U.S.C. § 112, ¶ 1 rejection of claim 27 has been overcome.

**§ 112, ¶ 1 Rejection of claim 35:**

Claim 35 was rejected for the same lack of support as claim 20, and further rejected for lack of support for an “intermediate” wireless device. The Applicant disagrees, but in an effort to speed prosecution, herein amends claim 35 to remove the “intermediate” language from the claim. As such, the Applicant submits that the 35 U.S.C. § 112, ¶ 1 rejection of claim 35 has been overcome.

**§ 112, ¶ 1 Rejection of claim 36**

Claim 36 was rejected for the same lack of support as claim 20. Inasmuch the 35 U.S.C. § 112, ¶ 1 rejection of claim 20 has been overcome, the 35 U.S.C. § 112, ¶ 1 rejection of claim 36 has been overcome.

**§ 112, ¶ 1 Rejection of claim 37**

Claim 37 was rejected for the same lack of support as claim 20, and further rejected for lack of support for an “intermediate” wireless device. The Applicant disagrees, but in an effort to speed prosecution, herein amends claim 37 to remove the “intermediate” language from the claim. As such, the Applicant submits that the 35 U.S.C. § 112, ¶ 1 rejection of claim 37 has been overcome.

**§ 112, ¶ 1 Rejection of claim 39**

Claim 39 was rejected for alleged lack of support for receiving segments of a file from a first and second source. The Applicant notes that support for the use of multiple file

sources occurs in several places. Specifically, the Applicant refers to provisional patent application number 60/259,503 filed January 2, 2001, entitled "Dynamically Load Balanced And Pulsed Media Distribution Network Architecture," which is incorporated by reference in the instant application, on page 5, lines 10-13, which provides support for the segmentation of content over many servers: **"By segmenting the content over many servers** located throughout the global Internet, a high degree of network load balancing and delivery efficiency can be achieved." 60/259,503, page 7, first paragraph, (emphasis added).

Furthermore, support exists for assembling movie segments received in any order from a variety of servers: "As the ClickMedia Manager assembles these movie segments, **regardless of the order they arrive or from which server they arrive**, it prepares the movie for playback..." 60/259,503, page 8, second paragraph, (emphasis added).

Thus, the Applicant demonstrates that the written description provides support for the receipt of first and second segments from first and second sources. As such, the Applicant submits that the §112, ¶ 1 rejection of claim 39 has been overcome.

#### **§ 112, ¶ 1 Rejection of claim 42**

Claim 42 was rejected for alleged lack of support for "a serial port for exchanging audio/video content with an external device via a serial cable." The Applicant notes that the specification clearly supports the use of serial connections, for example: **"Serial devices can interconnect** to the apparatus 11 via a Universal Serial Bus (USB) port 35." *Specification*, page 6, l. 25-26.

A serial port can be used with any type of signal, data, or information that is compatible with the hardware and software protocol with which the port is used (*e.g.*, the USB protocol). Nevertheless, and in an effort to speed prosecution, the Applicant hereby amends Claim 42 herein in an effort to better comport with the Examiner's suggestions.

Claim 42 is amended to reflect the exchange of information, which the Applicant asserts is inclusive of audio/video content. As such, the Examiner's rejection of claim 42 under 35 U.S.C. § 112, ¶ 1 has been overcome.

#### **§ 112, ¶ 1 Rejection of claim 43**

Claim 43 was rejected for alleged lack of support for "a docking port for exchanging audio/video content with an external device via a docking station." The Applicant notes that the specification clearly supports the use of a docking port, for example: "The apparatus 11 can be docked to a base station using a **docking port 33**" *Specification*, page 7, l. 1-3, (emphasis added).

One of ordinary skill in the art recognizes that a docking port can be used with any type of signal, data, or information that is compatible with the hardware and software protocol with which the docking port is used. Nevertheless, in an effort to speed prosecution, the Applicant amends Claim 43 herein in an effort to better comport with the Examiner's suggestions. Claim 43 is amended to reflect the exchange of information, which the Applicant asserts is inclusive of audio/video content. As such, the Examiner's rejection of claim 43 under 35 U.S.C. § 112, ¶ 1 has been overcome.

#### **§ 112, ¶ 1 Rejection of claim 45**

Claim 45 was rejected for alleged lack of support for "transmitting the recorded video, or transmitting the video to a remote wireless device, or transmitting any sort of data to a remote wireless device via the wireless network." *Final Office Action*, page 7, l. 12-14.

The Applicant notes that the capability to wirelessly send and receive video content was explicitly described in the provisional specification: "The device can use standard and/or proprietary data transmission technology **to send and receive full screen video content over a wireless Internet connection.**" *Provisional Specification*, page 1, l. 18-20, emphasis added. Further, various embodiments include "a **built in camera** for

capturing still and full motion digital video images." *Provisional Specification*, page 1, l. 17, (emphasis added).

Moreover, these features may be combined, for example: "user[']s can capture a video of a product...and then send it via the Internet back to the home office." *Provisional Specification*, page 2, l. 9-11.

The Applicant maintains that Claim 45 is explicitly supported as written. As such, the Applicant submits that the §112, ¶ 1 rejection of claim 45 has been overcome.



### 35 U.S.C. § 103(a) Rejections per Tran and Whiteside

Claims 20, 22-39, and 41-45 were rejected under 35 U.S.C. § 103(a) over U.S. patent number 6,202,060 (Tran) and U.S. patent number 5,835,861 (Whiteside). Claim 21 was rejected under 35 U.S.C. § 103(a), Tran in view of Whiteside and U.S. patent number 6,021,432 (Sizer).

The Examiner admits that Tran “fails to specifically disclose a proximity sensor configured to scan for and detect a remote wireless device” *Final Office Action*, p. 8 l. 20 – p. 9, l. 1. The Examiner also contends, however, that “Whiteside discloses a portable wireless device (Fig. 1; cell phone, 10) which uses an infrared transmitter and receiver (column 1, lines 59-64) to **scan and detect** a portable wireless media access device capable of wireless communication” *Final Office Action*, p. 9, l. 3-6, (emphasis added). The Examiner further stated, regarding Whiteside, that “when within range of the billboard, **the cell phone detects the signals transmitted from the billboard** and then **initiates** communications.” *Advisory Action*, p. 2, last two lines, (emphasis added).

The Applicant disagrees with the Examiner’s position that Whiteside teaches “scanning and detecting.” Whiteside repeatedly states that operation begins when a **user performs a manual step** (e.g., presses a button). **The device** does not perform the “scanning and detecting” process. Rather, **the user** of the device performs the scanning and detecting, and **the user manually initiates** communication. For example: “**a caller passing a billboard display presses a single button on or makes a simple manual action on his/her wireless telephone.**” *Whiteside*, col. 1, l. 29-31, (emphasis added), see also col. 2, l. 40-41 and col. 2, l. 47-49.

The **device** of Whiteside does not “**scan and detect**” nearby devices as alleged by the Examiner. As such, the device of Whiteside does not perform the function of a proximity sensor. Thus, the Applicant maintains that Whiteside does not teach a

proximity sensor, and the Examiner's rejection of claim 20 under 35 U.S.C. § 103(a) is overcome.

In that the 35 U.S.C. § 103(a) rejection of claim 20 is now overcome, the Applicant submits that the Examiner's 35 U.S.C. § 103(a) of claims depending from claim 20 are also overcome.

## CONCLUSION

The Applicant has evidenced proper written description support for each and every claim element. As such, all rejections under 35 U.S.C. §112, ¶ 1 have been overcome.

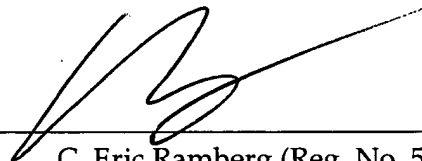
The Applicant has also evidenced the lack of each and every claim element in the proposed combination of Tran and Whiteside, namely a proximity sensor. Moreover, the Applicant has demonstrated that Whiteside does not teach "sensing and detecting" as alleged by the Examiner. As such, all rejections under 35 U.S.C. §103(a) have been overcome.

The Applicant has, therefore, overcome all rejections of record and the Examiner is respectfully requested to allow the presently pending claims. If the Examiner has any questions concerning this amendment or the application in general, the Examiner is invited to contact undersigned counsel concerning the same.

Respectfully submitted,  
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By: \_\_\_\_\_



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